



**Town of Walpole**  
**Commonwealth of Massachusetts**  
**Zoning Board of Appeals**

*Zoning Board of Appeals*  
John Lee, Chairman  
Susanne Murphy, Vice Chair  
Robert Fitzgerald, Clerk  
Mary Jane Coffey, Member  
Drew Delaney, Member  
David Anderson, Associate Member

**DECISION ON NOTICE OF PROJECT CHANGE**  
**G.L.C. 40B, §§20-23**

**APPLICANT**

**Wall Street Development Corp. – Burns Avenue Development, LLC**

**LOCATION OF PROPERTY INVOLVED**

**48 Burns Avenue**

**Walpole Assessors Map 20; Lots 115, 119, 136 & 137**

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**PROCEDURAL HISTORY**

1. The Walpole Zoning Board of Appeals (the “Board”) issued a Comprehensive Permit (the “Comprehensive Permit”) to Wall Street Development, LLC (“the Applicant”) pursuant to M.G.L. c. 40B by virtue of a Decision (the “2020 Decision”) filed with the Walpole Town Clerk on January 13, 2020, for a project located at 48 Burns Avenue (the “Original Project”).
2. By letter dated January 26, 2021 (the “Notice of Project Change”), the applicant submitted to the Board to amend certain conditions of the Comprehensive Permit for the Original Project pursuant to 760 CMR 56.05(11).
3. By letter dated February 10, 2021, the Applicant revised their January 26, 2021 letter to remove one of the requested conditions (A.3.). The final modification would be to amend Conditions C.1.a, C.1.c, C.2.h, C.2.i, D.1.e, H.9.a, H.9.b (the “Conditions”).
4. At a public meeting on February 11, 2021, having reviewed and discussed the Notice of Project Change, the Board voted unanimously that the proposed changes to the Original Project was substantial pursuant to 760 CMR 56.05 (11).
5. By memorandum dated March 24, 2021, Town Staff and consultants responded to the Notice of Project Change to amend certain Comprehensive Permit conditions from the 2020 Decision that the Applicant identified in their revised amendment request letter dated February 10, 2021.
6. The Board opened a duly advertised public hearing on March 1, 2021. The Board continued the hearing and deliberated on the following dates: April 7, 2021 and May 5, 2021. The public hearing was closed on May 5, 2021.
7. The Board conducted final review and approval of the written decision to the January 26, 2021 and later revised February 11, 2021 Notice of Project Change on May 19, 2021

8. The Board would like to have the record show that all public hearings and meeting on this Notice of Project Change were conducted through the Zoom remote meeting platform due to the Governor's March 10, 2020 declaration of a State of Emergency and limits on public gatherings. All submittals concerning the Notice of Project Change are part of the administrative record kept at Walpole Town Hall and incorporated herein.
9. The Board recognizes that there are still pending legal actions regarding access to the site and are taking no position on the matter.

### **DECISION**

The Board deliberated the applicant's requested modification to Conditions C.1.a, C.1.c, C.2.h, C.2.i, D.1.e, H.9.a, and H.9.b, by going through each condition and requested change individually. Consideration for each requested change was evaluated based on feedback provided by Town Staff and consultants given within the March 24, 2021 memorandum. A separate vote was taken for each requested modification to a condition identified with the Notice of Project Change.

### **RECORD OF VOTE**

The Board of Appeals voted, at its public hearing on May 5, 2021 to issue this Decision accepting the Notice of Project Change as stated below:

1. **Condition C.1.a.:** Deliver to the Board a check in a reasonable amount determined by the Board to be used for the Board to retain outside experts for technical and legal reviews and inspections required under these conditions.

**Requested Modification:** Deliver to the Board a check in the of Five Thousand and 00/100 Dollars (\$5,000.00) to be used for the Board to retain outside experts for technical reviews and inspections required by these conditions.

**MOTION** by Ms. Murphy and seconded by Mr. Fitzgerald to approve the requested modification.

**In Favor:** John Lee, Chair  
Robert Fitzgerald, Clerk  
Drew Delaney, Member

**Opposed:** Susanne Murphy, Vice Chair

**Absent:** Jane Coffey, Member

The vote was three (3) in favor and one (1) opposed resulting in a **vote of 3-1** which passed with a simple majority. **The result of the vote approved the modified condition as requested.**

2. **Condition C.1.c.:** Provide the Board with the recording information documenting the fact

that the Order of Conditions for the Project issued by the Conservation Commission dated November 4, 2019 has been recorded in the Norfolk Registry of Deeds and that all appeals have been exhausted.

**Requested Modification:** Provide the Board with the recording information documenting the fact that the Superseding Order of Conditions for the Project issued by the Massachusetts Department of Environmental Protection (Mass DEP) dated February 20, 2020 has been recorded in the Norfolk Registry of Deeds and that all appeals have been exhausted.

**MOTION:** by Ms. Murphy and seconded by Mr. Fitzgerald to approve the requested modification.

**In Favor:** John Lee, Chair  
Susanne Murphy, Vice Chair  
Robert Fitzgerald, Clerk  
Drew Delaney, Member

**Opposed:** None

**Absent:** Jane Coffey, Member

The vote was four (4) in favor and zero (0) opposed resulting in a **vote of 4-0** which passed unanimously. **The result of the vote approved the modified condition as requested.**

3. **Condition C.2.h.:** The Applicant shall provide security in an amount and form acceptable to the Town for emergency sediment control and site stabilization.

**Requested Modification:** The Applicant shall provide security in an amount acceptable to the Town for emergency sediment control and site stabilization. Said security shall be provided consistent with the provisions of G.L. c. 41, sec. 81U, as provided for in Condition No. 1.1, provided herein.

**MOTION** by Ms. Murphy and seconded by Mr. Fitzgerald to approve the requested modification.

**In Favor:** John Lee, Chair  
Susanne Murphy, Vice Chair  
Robert Fitzgerald, Clerk  
Drew Delaney, Member

**Opposed:** None

**Absent:** Jane Coffey, Member

The vote was four (4) in favor and zero (0) opposed resulting in a **vote of 4-0** which passed unanimously. **The result of the vote approved the modified condition as requested.**

4. **Condition C.2.i.:** The Applicant shall provide security in sum of one hundred twenty-five percent (125%) of the bona fide estimate of the cost of restorative landscaping. These funds will be used to restore the site should the project be abandoned, and no construction activity takes place for a year.

**Requested Modification:** The Applicant shall provide security in an amount acceptable to the Town for restorative landscaping to consist of loam and hydroseed of any disturbed areas. Said security shall be provided consistent with the provisions of G.L. c. 41, sec. 81U, as provided for in Condition No. I.I, provided herein.

**MOTION** by Ms. Murphy and seconded by Mr. Fitzgerald to approve the requested modification with the amended language:

*The Applicant shall provide security in an amount acceptable to the Town for restorative landscaping to consist of loam, hydroseed, **and planting and replant die-outs** of any disturbed areas. Said security shall be provided consistent with the provisions of G.L. c. 41, sec. 81U, as provided for in Condition No. I.I, provided herein.*

**In Favor:** John Lee, Chair  
Susanne Murphy, Vice Chair  
Robert Fitzgerald, Clerk  
Drew Delaney, Member

**Opposed:** None

**Absent:** Jane Coffey, Member

The vote was four (4) in favor and zero (0) opposed resulting in a **vote of 4-0** which passed unanimously. **The result of the vote approved modifying the condition to language deemed more suitable to the Board.**

5. **Condition D.1.e.:** Submit as-built plan of stormwater basin and infiltration units and certification by peer review engineer of compliance with the conditions of approval for the stormwater management system set forth in the Conservation Commission's Order of Conditions for the Project issued on November 4, 2019, the peer reviewer's comments and recommendations submitted during the course of the public hearings and the final approved stormwater management plans dated September 25, 2019.

**Requested Modification:** Submit as-built plan of stormwater basin and infiltration units and certification by peer review engineer of compliance with the conditions of approval for the stormwater management system set forth in the MassDEP's Superseding Order of Conditions for the Project issued on February 20, 2020, the peer reviewer's comments and recommendations submitted during the course of the public hearings and the final approved stormwater management plans dated January 20, 2020.

**MOTION** by Ms. Murphy and seconded by Mr. Fitzgerald to approve the requested modification with the amended language:

*As-built plan of the infiltration basin shall be provided to the Conservation Commission and reviewed by the Town Engineer no later than 30 days after completion of the final grades.*

**In Favor:** John Lee, Chair  
Susanne Murphy, Vice Chair  
Robert Fitzgerald, Clerk  
Drew Delaney, Member

**Opposed:** None

**Absent:** Jane Coffey, Member

The vote was four (4) in favor and zero (0) opposed resulting in a **vote of 4-0** which passed unanimously. **The result of the vote approved modifying the condition to language deemed more suitable to the Board.**

6. **Condition H.9.a.:** The Applicant shall comply with all the terms and conditions of the Order of Conditions for the Project issued by the Conservation Commission on November 4, 2019. No work may proceed pursuant to this Comprehensive Permit until all appeal periods have been exhausted and the Order is recorded in the Norfolk Registry of Deeds.

**Requested Modification:** The Applicant shall comply with all the terms and conditions of the Superseding Order of Conditions for the Project issued by MassDEP on February 20, 2020. No work may proceed pursuant to this Comprehensive Permit until all appeal periods have been exhausted and the Order is recorded in the Norfolk Registry of Deeds.

**MOTION:** by Ms. Murphy and seconded by Mr. Delaney to approve the requested modification with the amended language:

*The Applicant shall comply with all the terms and conditions of the Superseding Order of Conditions for the Project issued by MassDEP on February 20, 2020. However all special conditions from the Conservation Commission's November 4, 2019 Order of Conditions shall be retained with the exception of special conditions #24, #28, #46, #50, and #52. No work may proceed pursuant to this Comprehensive Permit until all appeal periods have been exhausted and the Order is recorded in the Norfolk Registry of Deeds.*

**In Favor:** John Lee, Chair  
Susanne Murphy, Vice Chair  
Robert Fitzgerald, Clerk  
Drew Delaney, Member

**Opposed:** None

**Absent:** Jane Coffey, Member

The vote was four (4) in favor and zero (0) opposed resulting in a **vote of 4-0** which passed unanimously. **The result of the vote approved modifying the condition to**

**language deemed more suitable to the Board.**

7. **Condition H.9.b.:** All terms and conditions of the Order of Conditions issued November 4, 2019 are expressly incorporated as conditions to this Comprehensive Permit and shall remain enforceable conditions under the Comprehensive Permit notwithstanding the result of any appeal. Should appeal of the Order of Conditions result in elimination or modification of Zoning Board of Appeals any condition of the Order of Conditions and the Applicant seeks to modify the Project based thereon, any such modification must be approved by the Board in accordance with 760 CMR 56.05(11).

**Requested Modification:** All terms and conditions of the Superseding Order of Conditions issued by MassDEP on February 20, 2020 and the plans referenced therein dated January 20, 2020 are expressly incorporated as conditions to this Comprehensive Permit and shall be the enforceable conditions under the Comprehensive Permit. In the event the Superseding Order of Conditions resulted in the elimination or modification of a condition and the Applicant seeks to modify the Project based thereon, any such modification must be approved by the Board in accordance with 760 CMR 56.05(11).

**MOTION:** by Ms. Murphy and seconded by Mr. Fitzgerald to approve the requested modification with the amended language:

*All terms and conditions of the Superseding Order of Conditions issued by MassDEP on February 20, 2020 and the plans referenced therein dated January 20, 2020 are expressly incorporated as conditions to this Comprehensive Permit and shall be the enforceable conditions under the Comprehensive Permit. However all special conditions from the Conservation Commission's November 4, 2019 Order of Conditions shall be retained with the exception of special conditions #24, #28, #46, #50, and #52. In the event the Superseding Order of Conditions resulted in the elimination or modification of a condition and the Applicant seeks to modify the Project based thereon, any such modification must be approved by the Board in accordance with 760 CMR 56.05(11).*

**In Favor:** John Lee, Chair  
Susanne Murphy, Vice Chair  
Robert Fitzgerald, Clerk  
Drew Delaney, Member

**Opposed:** None

**Absent:** Jane Coffey, Member

The vote was four (4) in favor and zero (0) opposed resulting in a **vote of 4-0** which passed unanimously. **The result of the vote approved modifying the condition to language deemed more suitable to the Board.**

On May 19, 2020, the Board voted to authorize Robert Fitzgerald to sign this decision on behalf of the Board.

**MOTION** to by Ms. Murphy and seconded by Mr. Fitzgerald to authorize Robert Fitzgerald, Clerk to sign the decision on behalf of the Board

**In Favor:** John Lee, Chair

Susanne Murphy, Vice Chair

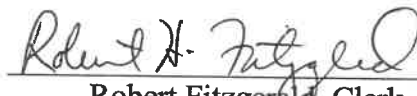
Robert Fitzgerald, Clerk

Drew Delaney, Member

**Opposed:** None

**Abstained:** Jane Coffey, Member

The vote was four (4) in favor and zero (0) opposed and one (1) abstained resulting in a **vote of 4-0-1**.

  
Robert Fitzgerald, Clerk

Dated: 5/24/21

Files with the Town Clerk on:

  
Elizabeth Gaffey, Town Clerk

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TOWN CLERK

**Notice:** Appeals, if any, by any party other than the Applicant, shall be made pursuant to Massachusetts General Laws, Chapter 40A, s.17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Walpole, Massachusetts. Any appeal by the Applicant shall be filed with the Housing Appeals Committee pursuant to G.L.c. 40B, §23, within twenty (20) days after the filing of this notice in the Office of the Town Clerk.